

# The Employee's Guide to the Family and Medical Leave Act and Temporary Disability Leave





WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

# An Introduction to the Family and Medical Leave Act

When you or a loved one experiences a serious health condition that requires you to take time off from work, the stress from worrying about keeping your job may add to an already difficult situation.

The Family and Medical Leave Act (FMLA) may be able to help. Whether you are unable to work because of your own serious health condition, or because you need to care for your parent, spouse, or child with a serious health condition, the FMLA provides unpaid, job-protected leave. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

This guide provides a simple overview of how the FMLA may benefit you.

# This Guide Explains:

- Who Can Use FMLA Leave?
- Am I Eligible for FMLA Leave?
- When Can I Use FMI A Leave?
- What Family Members Can I apply For FMLA to Care For?
- What Can the FMLA Do For Me?
- How Do I Request FMLA Leave?
- Communication With Your Employer
- The FMLA Leave Process
- Medical Certification
- Returning to Work
- What If I Don't Qualify For FMLA?

# Who Can Use FMLA Leave?

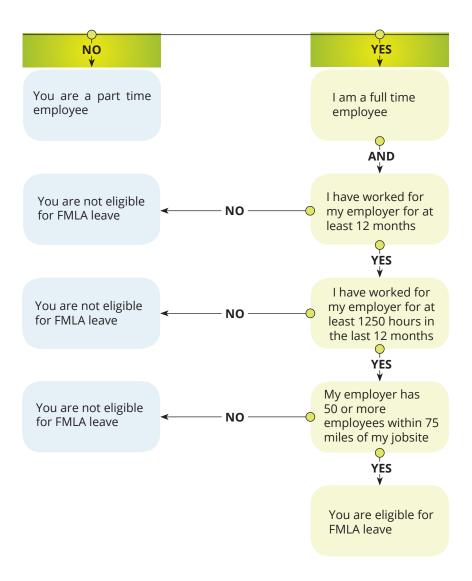
In order to take FMLA leave, you must first work for a covered employer. Private employers with at least 50 employees are covered by the law. Government agencies (including local, state and federal employers) and schools are covered by the FMLA, regardless of the number of employees.

If you work for a covered employer, you need to meet additional criteria to be eligible to take FMLA leave. Not everyone who works for a covered employer is eligible.

First, you must be a full time employee and have worked for your employer for at least 12 months. You do not have to have worked for 12 months in a row (so seasonal work counts), but generally if you have a break in service that lasted more than seven years, you cannot count the period of employment prior to the seven-year break.

Second, you must have worked for the employer for at least 1250 hours in the 12 months *before* you take leave. The 1250 hours excludes vacation, sick days, holidays, and other leaves. Although you can count prior years of service (less than seven) to meet the 12 month criteria, you must have worked the required amount of hours within the 12 *consecutive* months prior to the date your leave is to begin. That works out to an average of about 24 hours per week over the course of a year.

# Am I Eligible for FMLA Leave?



# When Can I Use FMLA Leave?

If you work for an employer that is covered by the FMLA, and you are an eligible employee, you can take up to 12 weeks of unpaid FMLA leave in any 12-month period for a variety of reasons, including:

### **Serious Health Condition**

You may take FMLA leave to care for your spouse, child or parent who has a serious health condition, or when you are unable to work because of your own serious health condition, which includes pregnancy.

The most common serious health conditions that qualify for FMLA leave are:

- 1) Hospitalization conditions requiring at least one overnight stay in a hospital or other medical care facility for inpatient care;
- 2) Treatment conditions that incapacitate you or your immediate family member that makes you unable to work or attend school for more than three consecutive days and require ongoing medical treatment, either multiple or single appointments with a health care provider for follow-up care such as prescription medication or testing. (includes conditions that would likely result in an incapacity of more than three days or surgery);
- **3)** Chronic Condition/Illness that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year (such as asthma, diabetes, epilepsy, etc); and
- **4)** Pregnancy including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest.
- 5) Long-Term Conditions permanent or long-term conditions for which treatment may not be effective, such as a stroke or terminal illness.

# **Military Family Leave**

The FMLA also provides certain military family leave entitlements. You may take unpaid FMLA leave for specified reasons related to certain military deployments. Additionally, you may take up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. However, spouses that are employed by the same employer are only eligible for a *combined* total of 26 weeks. Each spouse isn't entitled to 26 weeks separately.

# **Expanding Your Family**

You may take unpaid FMLA leave for the birth of a child and to bond with the newborn child, or for the placement of a child for adoption or foster care and to bond with that child. Men and women have the same right to take unpaid FMLA leave to bond with their child (called Baby Bonding Leave), but it must be taken within one year of the child's birth or placement, and must be taken as a continuous block of leave.

If both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. (DEC (LEGAL))

# What family members can I apply for FMLA to care for?

FMLA only covers care for the employee or immediate family members. Immediate family members are defined as:

### **Parent**

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term **does not** include parents-in-law.

### Child

A child means a biological, adopted, a foster child, stepchild, a legal ward, or a child of a person standing *in loco parentis* at the time that unpaid FMLA leave is to commence, who is under age 18. If the child is 18 or older, they child must be incapable of self-care because of a mental or physical disability at the time that FMLA leave is to begin. This term does not include son or daughter in-law.

# Spouse

A husband or wife as defined or recognized in the state or county where the individual was married and includes individuals in a common law marriage or same-sex marriage. Common Law marriages must be declared within the county or state both parties reside, **and** a copy of the <u>certified</u> <u>Declaration of Informal Marriage</u> certificate filed with the county clerk's office must be provided.

### In Loco Parentis

A person stands *in loco parentis* if that person provides day-to-day care or financial support for a child, or for a person who stood in loco parentis to that employee when the employee was a child.

Employees with no biological or legal relationship claiming to being in a *loco* parentis situation are entitled to unpaid FMLA leave so long as documentation is provided to sustain the claim.

(for example, an uncle who cares for his sister's children while she serves on active military duty, or a person who is co-parenting a child with his or her partner).

# **Next of Kin (servicemember only)**

Next of kin of a current servicemember is the nearest blood relative, other than the current servicemember's spouse, parent, or child.

Grandparents, aunts, uncles, cousins, nieces, nephews, or any other type of relationship are not applicable, and therefore, not covered under FMLA guidelines.

# What Can the FMLA Do for Me?

If you are faced with a health condition that causes you to miss work, whether it is because of your own serious health condition or to care for a family member with a serious health condition, you may be able to take up to 12 weeks of unpaid job-protected time off under the FMLA.

If you take FMLA leave, your employer must continue your health insurance as if you were not on leave, but **you** are required to continue to pay the monthly premiums.

Time off under the FMLA may not be held against you in employment actions such as hiring, promotions or discipline.

You can take FMLA leave as either a single block of time (continuous), or in multiple, smaller blocks of time (intermittent) if medically necessary. You can also take leave on a part-time basis if medically necessary (for example, if after surgery you are able to return to work only four hours a day or three days a week for a period of time). If you need multiple periods of leave for planned medical treatment such as physical therapy appointments or chemotherapy, you must try to schedule the treatment at a time that minimizes the disruption to your employer.

FMLA leave is <u>unpaid</u> leave. Per LISD policy, if you have any personal time off (vacation time, state personal days, comp time, nonwork days, etc), it is required that this paid leave will be used in conjuction with, and concurrently with, your FMLA leave so that you do not lose pay. However, if and when you have exhausted all of your personal paid time off, your paycheck will be docked each month beginning the first month your approved leave begins in order to prevent an overpayment. (for example, your leave begins April 25th, therefore, your paycheck will be docked beginning in April). A schedule of any docks or reductions to your paycheck will be sent to you prior to your paycheck being docked, if possible. If at any time while you are on leave that you enter into an overpayment status, your entire paycheck will be withheld until you have worked enough days to exit overpayment status. (Professional and para-professional employees are paid a daily rate, regardless of contract status, and LISD cannot pay you more than you've earned.)

In order to use FMLA, you must follow your employer's normal leave rules, such as submitting a leave request form, giving advance notice, or providing the required return to work documentation in a timely manner.

# How do I request FMLA Leave?

To apply for FMLA leave, you must notify the Leave Specialist or the Human Resources Department. Although you may notify your Principal or a coworker, you **MUST** notify the appropriate department as well. If you know in advance that you will need FMLA leave (for example, if you are planning to have surgery or you are pregnant), you must give your employer at least 30 days advance notice.

If you learn of your need for leave less than 30 days in advance, you must give your employer notice as soon as you can (generally either the day you learn of the need or the next day). When you need FMLA leave unexpectedly (for example, if an immediate family member is injured in an accident and they cannot care for themselves), you MUST inform the correct department that handles leave requests as soon as you can. You MUST follow your employer's usual notice or call-in procedures unless you are unable to do so (for example, if you are receiving emergency medical care).

While you do not have to specifically ask for FMLA leave during your first day of absence, you do need to provide enough information in order for the Leave Specialist to determine if your condition may be covered by the FMLA. If you don't give enough information in order to make that determination, your leave may not be protected.

FMLA is approved based on medical documentation provided on a Certification of Healthcare Provider Form (WH-380-E or WH-380-F), therefore, do not assume your serious health condition or the serious health condition of an immediate family member is automatically covered under FMLA.

FMLA can be requested for full-time or intermittent days. Once a condition has been approved for FMLA leave for a specific amount of time designated by your physician, and you need additional leave for that condition (for example recurring migraines or physical therapy appointments), your physician MUST request an extension on either a new Certification form <u>or</u> their company letterhead. The request must mention the previously approved health condition, the reason that your leave requires extension, whether it is full-time or intermittently, and a date that the extension will end. Please know that if you exhaust all FMLA and your doctor requests an extension, the extended leave **will not** be covered under FMLA.

When requesting an already approved intermittent FMLA-protected day, you do not have to tell your employer your diagnosis, but you do need to provide information indicating that your leave is due to an FMLA-protected condition (for example, stating that you have been to the doctor and have been given medication for your approved condition and told to stay home for two days).

# Communication with Your Employer

Ongoing communication between you and your employer will make the FMLA process run much more smoothly. Each of you has to follow guidelines about notifying the other when FMLA leave is being used.

**You** will need to inform your employer if your need for FMLA leave changes while you are out (for example, if your doctor determines that you can return to work earlier than expected or your leave needs to be extended). Your employer also requires *you* to provide the status on your intent to return to work, and, if necessary, periodic updates on your status.

**Your employer** must notify you if you are eligible for FMLA leave within five business days of your first leave request. If the employer says that you are not eligible, they have to state at least one reason why you are not eligible (for example, you have not worked for the employer for a total of 12 months).

At the same time that your employer gives you an eligibility notice, it must also give you a notice of your rights and responsibilities under the FMLA (for example, *this* Guideline).

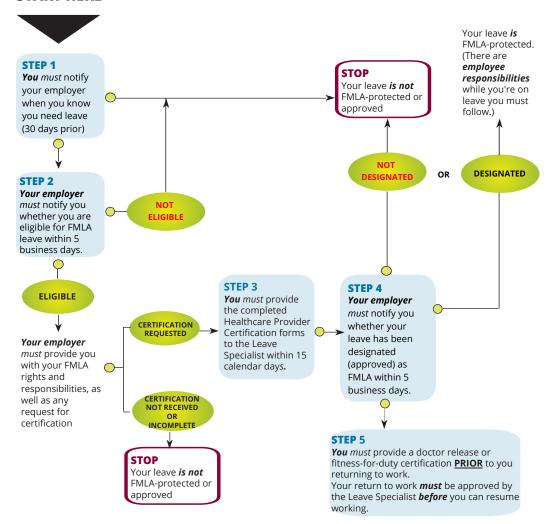
When your employer has the information necessary to determine if your leave is FMLA protected, it must notify you whether the leave will be designated as FMLA leave and, if possible, how much leave will be counted against your FMLA entitlement. If your employer determines that your leave is not covered by FMLA, it must notify you of that determination.

# The FMLA Leave Process

This flowchart provides general information to walk you through your initial request for FMLA leave step by step, and help you navigate the sometimes complicated FMLA process.

Please note, it is ESSENTIAL for you to be familiar with your employer's leave policy. There are several instances throughout the FMLA leave process where you will need to comply with <u>BOTH</u> the FMLA regulations AND your employer's leave policy.

### START HERE



# **Medical Certification**

If your employer requests medical certification, you only have 15 calendar days to provide it. If an extension is required, you must notify the Leave Specialist. **You** are responsible for the cost of getting the certification from a health care provider if a fee is required, and for making sure that the certification is provided to your employer. If you fail to provide the requested medical certification, your FMLA leave may be denied.

The medical certification must include some specific information, including:

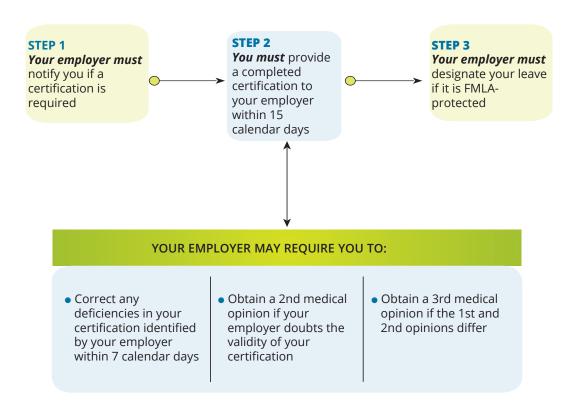
- 1) contact information for the health care provider;
- 2) when the serious health condition began;
- 3) how long the condition is expected to last;
- 4) appropriate medical facts about the condition (which may include information on symptoms, hospitalization, doctors visits, and referrals for treatment);
- 5) whether you are unable to work or your family member is in need of care; and
- 6) whether you need leave continuously or intermittently. (If you need to take leave a little bit at a time, the certification should include an estimate of how much time you will need for each absence, how often you will be absent, and information establishing the medical necessity for taking such intermittent leave.)

If your employer finds that necessary information is missing from your certification, they must notify you in writing of what additional information is needed to make the certification complete. **You** are responsible for getting the missing information from your physician within 7 calendar days. If the additional information requested is not provided after 7 calendar days, your FMLA request will be automatically denied without further notice.

If your employer has concerns about the validity of your certification, a second opinion can be requested, but at the cost of the employer. Your employer may also request a third opinion if the first and second opinions differ, but the employer must cover the cost.

If your need for leave continues for an extended period of time, or if it changes significantly, your employer may require you to provide an updated certification. A new or updated Certification of Healthcare Provider form can be requested every 30 days.

# Certification at a Glance



YOUR EMPLOYER MAY DENY FMLA LEAVE
IF YOU FAIL TO PROVIDE A FULLY COMPLETED CERTIFICATION

# Returning to Work

When you return to work, you must provide medical documentation in the form of a doctor release <u>or</u> Fitness-for-Duty Certification *within 5 days prior* to end of your approved leave period. This medical documentation must be approved by the Leave Specialist *before* the employee can return to work. NO EXCEPTIONS. Approval to return to work by anyone other than the Leave Specialist or Human Resources <u>is not</u> an authorized approval. Failure to comply will result in the employee being sent home without pay.

The FMLA requires that your employer return you to the same job, at the same rate of pay, status, and benefits that you left prior to your leave as long as you are able to return to work at the end of your original approved leave period. Please keep in mind that if you exhaust your yearly FMLA leave entitlement and/or are unable to return to work when originally scheduled to, your employer is *not* required to restore you to the same position you held prior to being on leave.

If you are not returned to the exact same job, the new position must:

- 1) involve the same or substantially similar duties, responsibilities, and status;
- 2) include the same general level of skill, effort, responsibility and authority;
- 3) offer identical pay, including equivalent premium pay, overtime and bonus opportunities;
- 4) offer identical benefits (such as life insurance, health insurance, disability insurance, sick leave, vacation, educational benefits, pensions, etc.); and
- 5) offer the same general work schedule and can be at the same or a nearby location.

An employer is not required to create a new position to accommodate an employee's need for light duty or any other restriction.

If additional time off is needed beyond the 12-week FMLA period, this additional leave period is **not** covered under FMLA.

If a teacher is due to return from leave near the end of the semester (within 3 weeks), the District may require the teacher to continue leave until the end of the semester. If such request is made, the employer is required to pay the employee for these additional days off. These days are not covered by FMLA if such leave has been exhausted.

### SPECIAL CIRCUMSTANCES:

# **Key Employees**

Certain *key employees* may not be guaranteed reinstatement to their positions following FMLA leave. A *key employee* is defined as a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee's worksite.

### **Teachers**

Special rules apply to employees of local education agencies. Generally, these rules apply when you need intermittent leave or when you need leave near the end of a school term. Additional leave beyond the 12-week FMLA period is available for full-time educators whose position requires them to have a certification from the State of Texas Board of Educator Certification. This information is available from the Leave Specialist.

# What If I Don't Qualify For FMLA?

LISD offers additional leave for employees who do not meet the required guidelines for the FMLA. This leave is called Temporary Disability Leave (TDL). The purpose of TDL is to provide a measure of job protection.

Texas Education Code (TEC) §21.409 provides any full-time employee whose position requires certification from the State Board for Educator Certification (SBEC) (i.e., superintendent, principal, assistant principal, counselor, diagnostician, librarian, and instructional aide) a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties because of a mental or physical disability of a temporary nature. Pregnancy and conditions related to pregnancy are treated the same as any other temporary disability.

LISD expands the eligibility for TDL beyond the TEC. Local temporary disability leave shall be available for **all** *full-time* employees , other than those with educator certification, as long as the eligibility requirement is met.

### **Eligibility and Length of Leave**

If temporary disability leave is approved for full-time educators, the employee must be employed for 6 months. The length of leave is no longer than 180 calendar days, and leave must be taken in one continuous block of time.

If temporary disability leave is approved for full-time employees other than those with educator certification, the employee must be employed for 6 months, and leave shall not exceed 60 calendar days.

TDL that is unused by any employee will be forfeited for the remainder of the fiscal year (June - July).

### **Counting TDL**

TDL is granted per incident as one continuous block of time and is not intended to be taken on an intermittent or reduced schedule basis. It's the only leave recorded in *calendar days*. This means the nonwork days, such as weekends, holidays, and extended breaks (including spring, winter, and summer breaks), are counted toward the employee's total leave entitlement. As a result, an employee's TDL may span two school years.

### **Provisions**

Employees *must request* temporary disability leave. The request must be accompanied by a physician's statement confirming the employee's inability to work and estimating a probable date of return (Certification of Health Care Provider).

TDL is an **unpaid** leave. LISD requires TDL to run concurrently with other district paid leave *and* Family Medical Leave (FML). If an employee is placed on TDL, districts are not required to contribute to the employee's health insurance premium. Employees may continue the group health care coverage by paying the total premium themselves, which includes the employer's portion.

### Return-to-work

An employee *must* submit a request to return to work *at least 30 days prior* to the anticipated return-to-work, when applicable. This request must include a physician's statement regarding the employee's ability to perform his or her regular work duties.

Although TDL provides an employee with a guarantee to return to work, it does not guarantee the employee will be returned to the same position previously held prior to TDL. Reinstatement requirements at the end of TDL include the following:

- The employee must be reinstated to the school he or she was previously assigned, if an appropriate assignment is available.
- If an appropriate assignment is not available, the educator may be assigned to another campus, subject to the approval of the campus principal.
- if a position is not available at another campus before the end of the school year, the employee must be reinstated to a comparable position at the original campus at the beginning of the next school year.



Longview Independent School District Attn: Kristie Womack 1301 East Young Street Longview, Texas 75606 Phone 903-381-2374 Fax 903-381-2246

# **Family and Medical Leave Request Form**

Em	ployee Name:					
Ca	mpus: Assignment:					
Cł	hoose Option:					
A.	I am requesting full time leave beginning and ending  month/day/year month/day/year					
В.	I am requesting intermittent leave, and I will be available for duty part time from month/day/year to month/day/year					
or unavailable for duty on these days:						
or unavailable for duty on these days:						
	I am requesting Family and Medical Leave (FMLA) for the following qualifying reason (select all that apply):					
a) b) c)	_ ^ _					
d) e)	□ A qualifying exigency arising out of the fact that my □spouse, □child, or □parent is on covered active duty or has been notified of an impending call or order to covered active duty with the Armed Forces.					
f)	□ I am needed to care for my □spouse □child □parent (in-laws not covered) who is a covered servicemember with a serious health condition. (Military Caregiver Leave)					
All le	eave taken for this reason will be designated as FMLA leave, if approved, and will count against the 12 week allowance of FMLA leave you have					
	able to use in the applicable 12-month period from July 1st – June 30th of each year.					
	actual scheduled period of incapacity will be determined by the Certification of Healthcare Provider form, once received.					
	ise know that should you choose to be absent beyond the period of incapacity as identified by your healthcare provider, beyond the date released to rn to regular duty by this same health care provider, or past the date all FMLA has been exhausted, you will be absent without FMLA coverage.					
All p	aid time off will be used concurrently with your approved leave. (state days, vacation, non-work days, comp time, paid local leave)					
lf en	nployee chooses to extend their period of incapacity to bond with their newborn child, the employee must choose options C and D.					
All le	eave related to maternity or Baby Bonding requires Proof of Birth from the OB-GYN, doula, birthing center, or hospital.					
	derstand that additional Medical Certification forms will be required if I choose <u>not</u> to return to work following my leave due to:  1) the continuation, recurrence, or onset of a serious health condition which would entitle me to FMLA;					
	2) the continuation, recurrence, or onset of a covered service member's serious injury or illness which would entitle me to FMLA;					
	3) other medical circumstances beyond my control. 4) excessive absences beyond the period of incapacity stated by your treating physician on the Certification forms. (every 30 days)					
	derstand that failure to return to work following my leave, whether released to do so or FMLA exhaustion, I will be responsible for abursement to the District for all health benefit coverages paid on my behalf.					
Cert	be restored to work after taking FMLA leave, you are required to provide a return to work without restriction(s) release or Fitness For Duty tificate from your treating physician stated on your Certification forms to the Leave Specialist at leave 5 days <u>BEFORE</u> your anticipated return to work until you receive authorization to do so from the Leave Specialist.					
	derstand this form does not qualify me for FMLA coverage, and I will not automatically be covered by FMLA. This form is only					
	d to determine the 12-month 1250-hour requirement, and to help establish FMLA validity. All Certification forms must be ained and returned to the Leave Specialist to verify FMLA approval and designation.					
Plea	ase return all FMLA request and Certification of Health Care Provider forms within 15 calendar days of the date of receipt. signing this, I verify that I have read the above rules and regulations, and I understand my responsibilities.					
Emr	oloyee Signature:					
	Date					



Longview Independent School District Attn: Kristie Womack 1301 East Young Street Longview, Texas 75606 Phone 903-381-2374 Fax 903-381-2246

# **Temporary Disability Leave Request Form**

Employee Printed Name						
Employe Campus/Building	Assignment					
I am requesting unpaid Temporary Disability Leave (TDL) to begin	and end  mm/dd/yyyy mm/dd/yyyy					
am requesting Temporary Disability Leave (TDL) for the following qualifying	reason (select all that apply):					
<ul> <li>□ My own serious health condition.</li> <li>□ I am needed to care for my: □spouse, □child, or □parent with a serious health condition.</li> </ul>						
Name of family member:						
☐ The birth of my child. ☐ With Baby Bonding leave ☐ Without Baby Bonding leave						

\*the following information is taken in part from www.tasb.org, the LISD Employee Handbook, and DEC Legal.

Texas Education Code (TEC) §21.409 provides any full-time employee whose position requires certification from the State Board for Educator Certification (SBEC) (i.e., superintendent, principal, assistant principal, counselor, diagnostician, librarian, and instructional aide) a leave of absence for temporary disability at any time the educator's condition interferes with the performance of regular duties because of a mental or physical disability of a temporary nature. Pregnancy and conditions related to pregnancy are treated the same as any other temporary disability.

Some districts expand the eligibility beyond TEC. Per LISD, local temporary disability leave shall be available for full-time employees other than those with educator certification.

The purpose of TDL is to provide a measure of job protection.

# Eligibility and Length of Leave

If temporary disability leave is approved for full-time educators, the length of leave is no longer than 180 calendar days, and leave must be taken in one continuous block of time.

If temporary disability leave is approved for full-time employees other than those with educator certification, the employee must be employed for 6 months, he length of leave is no longer than 60 calendar days, and leave must be taken in one continuous block of time.

# **Counting TDL**

TDL is granted per incident as one continuous block of time and is not intended to be taken on an intermittent or reduced schedule basis. It's the only leave recorded in calendar days. This means the nonwork days, such as weekends, holidays, and extended breaks (including spring, winter, and summer breaks), are counted toward the employee's total leave entitlement. As a result, an employee's TDL may span two school years. Any unused TDL by any employee will be forfeited for the remainder of the fiscal year (June - July).

# **Provisions**

Employees must request temporary disability leave. The request must be accompanied by a physician's statement confirming the employee's inability to work and estimating a probable date of return (Certification of Health Care Provider).

LISD requires TDL to run concurrently with other district paid leave and Family Medical Leave (FML).

TDL is an unpaid leave. If an employee is placed on TDL, districts are not required to contribute to the employee's health insurance premium. Employees may continue the group health care coverage by paying the total premium themselves.

### Return-to-work

An employee must submit a request to return to work at least 30 days prior to the anticipated return-to-work, when applicable. This request must include a physician's statement regarding the employee's ability to perform his or her regular work duties.

Although TDL provides an employee with a guarantee to return to work, it does not guarantee the employee will be returned to the same position previously held prior to TDL. Reinstatement requirements at the end of TDL include the following:

- The employee must be reinstated to the school he or she was previously assigned, if an appropriate assignment is available.
- If an appropriate assignment is not available, the educator may be assigned to another campus, subject to the approval of the campus principal.
- The employee will receive equivalent employment benefits, pay, and other terms and conditions of employment.

If a position is not available at another campus before the end of the school year, the employee must be reinstated to a comparable position at the original campus at the beginning of the next school year.

<u>I understand this form does not qualify me for TDL coverage, and I will not automatically be covered by TDL. This form is only used to determine eligibility and to help establish TDL validity. All Certification forms must be obtained and returned to the Leave Specialist to verify TDL approval and designation.</u>

Please return all TDL request and Certification of Health Care Provider forms within 15 calendar days of receipt.

By signing this, I verify that I have read the above rules and regulations, and I understand my responsibilities.

Employee Signature	Date
. ,	